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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,762	11/14/2003	Helmut M. Heine	2185-165	7397

6449 7590 06/14/2005

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EXAMINER

RUTHKOSKY, MARK

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/712,762

Applicant(s)

HEINE ET AL.

Examiner

Mark Ruthkosky

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☒ Claim(s) 2-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/14/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

No information disclosure statement has been filed in the application file. The applicant is reminded of the duty to disclose pertinent prior art documents. The examiner requests a copy of the foreign search report for the priority document along with an IDS, including documents cited therein.

### ***Drawings***

The drawings filed on 11/14/2003 have been approved.

### ***Claim Objections***

Claims 2-5 are objected to because claims 2 and 4 are identical and claims 3 and 5 are identical. The applicant cannot claim identical inventions. The applicant should cancel one of the claims from each duplicate set. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 1745

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims state that the *lithium ion cell* has the same polarity at both of the said opposite ends. This is not consistent with the claim language as the *chargeable battery* is noted to have opposite ends. Further, the Li-ion cell is not taught in the specification to have the same polarity at both of the said opposite ends.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Fang (US 2003/0234632 A1.)

The instant claims are to a chargeable battery for medical diagnostic instruments, comprising a battery having two opposite ends and an outer sheathing in which a Li-ion cell, a protective circuit and a charge/discharge module are accommodated.

Fang (US 2003/0234632) teaches a chargeable battery comprising a battery having two opposite ends and an outer sheathing in which lithium rechargeable cells, a protective circuit and a charge/discharge module are accommodated (see figures 3 and 5.) Lithium rechargeable cells are inherently lithium ion batteries as the lithium ion is used to transfer charge upon charging or discharging the battery. A charge/discharge receptacle is located in the casing (Figure 3 and the accompanying text.) The protective circuit further includes a controller that prevents charge/discharge overloading (paragraphs 21-22 and figure 5.) This is also considered to be a charge/discharge module. Thus, the claims are anticipated.

Claims 1, 3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Tamai (US 5,764,033.)

Tamai (US 5,764,033) teaches a chargeable battery comprising a battery pack in which lithium ion rechargeable cells, a protective circuit and a charge/discharge module are accommodated (figure 1; col. 2, lines 1-38; claims 1-5.) Lithium rechargeable cells are inherently lithium ion batteries as the lithium ion is used to transfer charge upon charging or discharging the battery. The battery pack inherently has having two ends and an outer sheathing, as it is a pack. The protective circuit includes a control system that prevents charge/discharge overloading by switching the system off when the charging current is greater than a specified value (col. 1, lines 35-60.) This is considered to be a charge/discharge module. Thus, the claims are anticipated.

*Allowable Subject Matter*

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 2 or 4 and 6 are allowable if the rejection based on 35 U.S.C. 112 and the objection to duplicate claims are overcome.

The following is an examiner's statement of reasons for allowance: The instant claims are to a chargeable battery for medical diagnostic instruments, comprising a battery having two opposite ends and an outer sheathing in which an Li-ion cell, a protective circuit and a charge/discharge module are accommodated, wherein said Li-ion cell has a same first polarity at both said opposite ends and a terminal of a second polarity opposite to said first polarity is arranged in a lateral surface of said battery.

The most pertinent prior art has been cited. The references do not teach a battery having two opposite ends and an outer sheathing in which an Li-ion cell, a protective circuit and a charge/discharge module are accommodated, wherein said Li-ion cell has a same first polarity at both said opposite ends and a terminal of a second polarity opposite to said first polarity is arranged in a lateral surface of said battery.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Art Unit: 1745

***Examiner Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Ruthkosky whose telephone number is 571-272-1291. The examiner can normally be reached on FLEX schedule (generally, Monday-Thursday from 9:00-6:30.) If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free.)

Mark Ruthkosky

Primary Patent Examiner

Art Unit 1745

*Mark Ruthkosky*  
6/10/05